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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

JEFFREY SCHERMER et al.,

Plaintiffs and Appellants,

v.

UPLAND CASCADE, L.P. et al.,

Defendants and Respondents.

D072997

(Super. Ct. No. 37-2014-00083369-
CU-MC-CTL)

APPEAL from an order of the Superior Court of San Diego County, Gregory W. Pollack, Judge. Reversed.

Robbins Arroyo, Brian J. Robbins, George C. Aguilar and Steven M. McKany;
Allen, Semelsberger & Kaelin, George H. Kaelin, III, James C. Allen, David
Semelsberger and Jessica S. Taylor; Law Office of George W. Cochran and George W.
Cochran, for Plaintiffs and Appellants.

Cooksey, Toolen, Gage, Duffy & Woog, Phil Woog and Matthew R. Pahl, for
Defendants and Respondents.

OVERVIEW

Plaintiffs Jeffrey Schermer, David Moravee, Tom Fisher, Janice Wenhold, Karen Vielma, Gloria Carruthers, and George Rivera (collectively, plaintiffs) appeal from an order awarding attorney fees to defendants Upland Cascade, L.P., Carbon Canyon, Ltd., Park Contempo, Ltd., RF Group, L.P., Beaumont Investments, Ltd., Indio Investments, Inc., Tokay Manor, Ltd., MHP-Bolsa, L.P., Hamner Park Associates, Brookside Investments, Ltd., Del Prado Mobilehome Park, L.P., Orangewood Investments, L.P., and Hermosa Investments, L.P. (collectively, dismissed defendants).

These 13 dismissed defendants were "single purpose" business entities that were named in plaintiffs' class action brought against 18 such entities and the alleged owner-operators of these entities, Thomas T. Tatum, Jeffrey A. Kaplan, and their management company, Mobile Community Management Company (MCMC; the 18 entities, Tatum, Kaplan and MCMC are sometimes collectively referred to as defendants). The class action alleged plaintiffs and the class were subjected to uniform unconscionable lease agreements and leasing practices by defendants.

In *Schermer et al. v. Tatum et al.* (2016) 245 Cal.App.4th 912 (*Schermer I*), we upheld an order sustaining the demurrer of defendants without leave to amend to the class allegations only, concluding the court properly determined there was no reasonable possibility plaintiffs could satisfy the community of interest requirement for class certification because common questions of law and fact did not predominate.

On remand, the instant case became a direct action by plaintiffs against (all 21) defendants. In June 2016, defendants moved for an award of attorney fees and costs they incurred in connection with their successful defense of plaintiffs' appeal in *Schermer I*. Plaintiffs opposed this request. The trial court (Judge Joel M. Pressman) in its October 7, 2016 minute order denied plaintiffs' motion to tax costs, and, as relevant to the instant appeal, also denied defendants' motion for an award of attorney fees in connection with *Schermer I*.

In so doing, the court's October 7 order provided as follows: "Defendants' Motion for Attorney Fees is DENIED without prejudice. While the Court of Appeal ordered that costs were to [be] awarded in defendants' favor for the appeal, the attorney fees must be allowable pursuant to contract or statute. The motion is premature as this Court only ruled on the class action allegations in this case.

"[¶] . . . [¶]

"[¶] . . . The Defendants who own and operate parks where no former class representative plaintiff resides [i.e., dismissed defendants] did not obtain dismissals in their favor against the former Plaintiff class representatives. In their moving papers, Defendants acknowledge that this Court's order [that was the subject of *Schermer I*] dismissed the action only 'as to all members of the purported class other than the named plaintiffs.' [¶] This ruling is without prejudice to arguing for attorney fees at the conclusion of the case."

Dismissed defendants alone moved for judgment on the pleadings pursuant to section 438, subdivision (c)(1)(B)(ii)¹ of the Code of Civil Procedure. Dismissed defendants in their motion argued that, while plaintiffs' action could proceed against the mobilehome parks where they resided and against those parks' owner-operators (collectively, remaining defendants), they no longer had standing to sue dismissed defendants because of the lack of a contractual relationship. Specifically, dismissed defendants argued without the class allegations to "tie" defendants together "under an umbrella of identical claims" pursuant to Code of Civil Procedure section 382,² plaintiffs as seven individuals and *former* class representatives of the failed class action lacked standing to maintain an action against the 13 entities where none of plaintiffs ever resided.

Plaintiffs did not directly oppose the motion for judgment on the pleadings, but instead claimed they would be filing a third amended complaint, either by stipulation or through a motion seeking leave to do so, in which they would not name any of dismissed defendants. Plaintiffs further claimed the omission of dismissed defendants from their amended pleading would operate as a dismissal without prejudice only to such defendants.

¹ Subdivision (c)(1)(B)(ii) of Code of Civil Procedure section 438 provides that a motion for judgment on the pleadings may be made by a defendant when the "complaint does not state facts sufficient to constitute a cause of action against that defendant."

² Code of Civil Procedure section 382 provides in relevant part: "[W]hen the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all."

Dismissed defendants in their reply to plaintiffs' response noted plaintiffs' assurance they would not include dismissed defendants in an amended complaint plaintiffs might file "at some point in the future" was not a valid defense to the dismissed defendants' motion, which sought their dismissal from the action with prejudice.

The trial court (i.e., Judge Pressman) agreed with dismissed defendants, and issued a minute order dated January 6, 2017. As relevant here, the January 6 minute order provided that dismissed defendants were entitled to "\$0 principal [and] \$0 punitive damages," "*\$0 attorney fees*," "\$0 prejudgment costs," and "\$0 other costs." (Italics added.) The January 6 minute order directed dismissed defendants to "prepare the judgment."

Key to the instant appeal, the court (i.e., Judge Pressman) on February 17, 2017, entered judgment for dismissed defendants as follows: "IT IS ORDERED, ADJUDGED AND DECREED that judgment on the pleadings is now entered on behalf of [dismissed d]efendants . . . against Plaintiffs . . . , who shall recover nothing against said [dismissed d]efendants. Judgment is entered for [dismissed d]efendants in the amount of: \$0 principal, \$0 punitive damages, *\$0 attorney[] fees*, \$0 interest, \$0 prejudgment costs, and \$0 other costs." (Italics added.)

Following entry of the February 17 judgment, which was *not* appealed, dismissed defendants in March 2017 moved for an award of fees and costs against plaintiffs, despite the fact the February 17 judgment expressly provided dismissed defendants were entitled to "\$0" attorney fees and costs, as noted. The renewed motion was heard by Judge Gregory Pollack.

The court on August 25, 2017 issued a minute order finding dismissed defendants were entitled to an award of attorney fees of \$155,182.50 from plaintiffs.³ Surprisingly, from our review of the record it does not appear either plaintiffs or dismissed defendants in their briefing to Judge Pollack referenced the February 17 judgment, which had "awarded" dismissed defendants "\$0" in attorney fees.

In granting the fee award, the court in its August 25 order noted plaintiffs did not contest the reasonableness of the claimed hourly rates or the total hours spent. To support the award of fees, the court relied on Civil Code section 798.85 of California's Mobilehome Residency Law and on Civil Code section 1717, inasmuch as paragraph 27 of the standardized lease agreement used by defendants provided for an award of attorney fees to the "prevailing party."

In rejecting plaintiffs' argument that the motion for fees was again premature because the litigation against the remaining defendants was still pending, the court ruled as follows: "Here, final judgments have been entered on behalf of the thirteen moving defendants. As to them, and the attorneys whom they employed, entitlement to an award of attorney's fees is now appropriate. That their attorneys also represented other defendants ('the remaining defendants'), against whom the litigation is still pending, and that some of the legal work performed on behalf of the moving defendants may well

³ The court in this same order also awarded costs to dismissed defendants, which award plaintiffs did *not* challenge on appeal. As such, we do not address the propriety of the costs award in this opinion.

inure to the ultimate benefit of the remaining defendants, does not require this court to reduce the awardable attorney's fees. [See citation.]

"[¶] . . . [¶]

"As noted within ¶16 of the declaration of attorney Matthew R. Pahl, 'all attorney's fees incurred by the Defendants are related to (i) challenging the class action allegations and the proceedings before the Court of Appeal, and (ii) the motions for judgment on the pleadings. In the case of the former, the attorney fees would be the same if there was one Defendant or twenty Defendants, because the work done with regard to the pleadings was for the collective whole, not any one particular Defendant. In the case of the latter, those fees are directly attributable to work done on behalf of the Moving [i.e., dismissed] Defendants. Therefore, all fees incurred to date have been incurred to defend the Moving Defendants.' " (Emphasis in original deleted.)

The court next addressed the issue of "double recovery." It noted that, "should the remaining defendants also ultimately become prevailing parties, their joint attorneys will not be able to recover any of the amount now being awarded on behalf of the moving defendants."

With regard to plaintiffs' argument that such an award could financially ruin them, the court found plaintiffs' proposed declarations purportedly supporting this argument "untimely" and therefore, were "not considered by the court," inasmuch as plaintiffs presented those declarations for the first time at the hearing on the motion. Furthermore, the court noted that any "meaningful analysis" of financial ruin to plaintiffs "must factor in the economic value of their lawsuit which continues as to the remaining defendants, a

lawsuit anticipated to be lucrative enough such that their attorneys continue to advance costs and represent them on a contingency basis."

The court in its August 25 order also noted that plaintiffs' financial condition was "irrelevant" as a result of dismissed defendants' entitlement to fees based upon the attorney fee provision in the standardized lease agreement. Based on its own experience of 25 years as a civil trial lawyer and almost nine years as a trial judge, the court found dismissed defendants' request for fees reasonable (less \$4,700), which it found was the "joint and several liability" of plaintiffs.

As noted *ante* (in fn. 3), plaintiffs appealed only that portion of the August 25 order granting dismissed defendants an award of attorney fees. Neither party in their briefing to this court raised the issue of whether the February 17 judgment deprived the trial court of jurisdiction to make such an award; nor did the parties raise this issue at this court's November 15, 2018 oral argument.

Following oral argument, this court re-reviewed the appellate record including the terms of the February 17 judgment. As a result, this court issued an order dated November 29, 2018, vacating the submission of the case pursuant to California Rule of Court, rule 8.256(e), and directing the parties to file simultaneous letter briefs addressing the effect, if any, of the February 17 judgment on the propriety of the August 25 minute order as it related to the merits of the instant appeal.

As requested, the parties submitted supplemental letter briefs, which have been reviewed and considered by this court. Briefly, plaintiffs argued the February 17 judgment "awarding" dismissed defendants "\$0" in attorney fees prevented the court on August 25 from entering a new or different order regarding such an award. Dismissed defendants, however, argued the February 17 judgment "served as the basis" for the court to award them fees, and in no way affected the propriety of the August 25 order.

As we explain, we agree with plaintiffs and conclude the trial court lacked jurisdiction to award dismissed defendants attorney fees following entry of the February 17 judgment. Reversed.

DISCUSSION

A. *Guiding Principles*

"A court may reconsider its order granting or denying a motion and may even reconsider or alter its judgment so long as judgment has not yet been entered. Once judgment has been entered, however, the court may not reconsider it and loses its unrestricted power to change the judgment." (*APRI Ins. Co. S.A. v. Superior Court* (1999) 76 Cal.App.4th 176, 181–182 (*APRI*); see *Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455, 479 [noting the general rule that "entry of judgment ordinarily terminates a trial court's jurisdiction to rule on the merits of a case"]; *Ramon v. Aerospace Corp.* (1996) 50 Cal.App.4th 1233, 1236 (*Ramon*) [noting a " 'court may reconsider its order granting or denying a motion and may even reconsider or alter its judgment so long as judgment has not yet been entered' "].)

However, once judgment has been entered — such as in the instant case with respect to dismissed defendants, a court " 'loses its *unrestricted* power to change the judgment' " (*Ramon, supra*, 50 Cal.App.4th at p. 1236) and " 'may correct judicial error only through certain limited procedures such as motions for new trial and motions to vacate the judgment.' " (*Ibid.*) The opposing party "must use statutory methods to attack the judgment in the trial court or must file an appeal, and the party must take those steps within specified time periods." (*Id.* at p. 1238; see Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2017) ¶ 9:332.3, p. 9(I)–151 ["Once a judgment has been entered, the proper challenge is a motion for new trial ([Code Civ. Proc.,] § 657), which may be based on various grounds including *errors of law*"].)

The issue in *APRI* involved whether a trial court, which had entered judgment in favor of a foreign insurer before the time for reconsideration of its order granting a motion to quash and dismissal had run, nonetheless retained jurisdiction to grant reconsideration under Code of Civil Procedure section 1008. The *APRI* court ruled the trial court could not grant reconsideration after entry of judgment. (*APRI, supra*, 76 Cal.App.4th at p. 180.)

In reaching its decision, the court in *APRI* recognized the trial court failed "to observe the critical distinction between an order of dismissal, which is a judgment, and other orders. 'A court may reconsider its order granting or denying a motion and may even reconsider or alter its judgment so long as judgment has not yet been entered. Once judgment has been entered, however, the court may not reconsider it and loses its unrestricted power to change the judgment. It may correct judicial error only through

certain limited procedures such as motions for new trial and motions to vacate the judgment. [Citations.]' (*Passavanti v. Williams* (1990) 225 Cal.App.3d 1602, 1606.)" (*APRI, supra*, 76 Cal.App.4th at p. 181.)

That the plaintiff in *APRI* had filed her motion to reconsider before the court entered judgment in favor of the insurer was of no consequence to the *APRI* court, which found as follows on this issue: "Plaintiff attempts to distinguish the many cases holding that a trial court is without jurisdiction to grant reconsideration after judgment is entered, by pointing out that her motion was filed before the trial court entered its judgment. While that is so, the argument misses the point. The issue is jurisdictional. Once the trial court has entered judgment, it is without power to grant reconsideration. The fact that a motion for reconsideration may have been pending when judgment was entered does not restore this power to the trial court." (*APRI, supra*, 76 Cal.App.4th at p. 182.)

In finding the trial court lacked jurisdiction to reconsider its ruling dismissing the insurer from the action, the *APRI* court in part relied on *Ramon, supra*, 50 Cal.App.4th 1233. The issue in *Ramon* was whether a motion for reconsideration filed after judgment had been entered extended the time to appeal from the judgment. In concluding that it did not, the *Ramon* court held that a postjudgment motion for reconsideration had no effect on the time for notice of appeal because "after entry of judgment, a trial court has no further power to rule on a motion for reconsideration." (*Ramon*, at p. 1236.)

As noted by the *APRI* court, the "court [in *Ramon*] emphasized the significant impact of entry of judgment on the trial court's jurisdiction: 'A final judgment terminates the litigation between the parties and leaves nothing in the nature of judicial action to be

done other than questions of enforcement or compliance. "Until entry of judgment, the court retains complete power to change its decision . . . ; it may change its conclusions of law or findings of fact. [Citation.] After judgment a trial court cannot correct judicial error except in accordance with statutory proceedings. [Citations.] A motion for reconsideration is not such a motion." ' ([*Ramon, supra*,] at pp. 1237–1238, quoting *Nave v. Taggart* (1995) 34 Cal.App.4th 1173, 1177.)" (*APRI, supra*, 76 Cal.App.4th at pp. 181–182; see also *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 859, fn. 29 [noting on the date plaintiff "made her motion for a new trial, the superior court had caused entry of judgment" and thus, "[a]fter entry of judgment, the superior court did not have jurisdiction to entertain or decide a motion for reconsideration"]; compare *Stratton v. First Nat. Life Ins. Co.* (1989) 210 Cal.App.3d 1071, 1081–1082 [noting court retained jurisdiction to hear a motion for reconsideration after granting summary judgment in favor of two defendants against plaintiff and another defendant because, unlike in the instant case or in *APRI* or *Ramon*, no judgment had been entered before the trial court ruled on the motion for reconsideration].)

Dismissed defendants argue in their supplemental briefing that the scope of the instant appeal is limited to the propriety of the August 25 minute order in which the trial court granted them attorney fees in the amount of about \$155,000, as plaintiffs "opted not to appeal" the February 17 judgment. They further argue merely because the February 17 judgment "did not initially award damages, fees, or costs in no way affected [dismissed defendants'] right to seek statutory and contractual attorney fees by way of a separate motion after judgment had been entered." We find these arguments unavailing.

Here, the record clearly shows the court, in granting on January 6 the motion of dismissed defendants for judgment on the pleadings, also "awarded" dismissed defendants "\$0" attorney fees. The record further shows the court directed dismissed defendants to "prepare the judgment." Following the court's January 6 minute order, the court signed the unambiguous judgment "order[ing], adjud[ing] and decree[ing]" that plaintiffs shall recover "nothing" from dismissed defendants *and* that judgment is entered for dismissed defendants "in the amount of: \$0 principal, \$0 punitive damages, \$0 *attorney fees*, \$0 interest, \$0 prejudgment costs, and \$0 other costs." (Italics added.)

Once judgment was entered on February 17, the trial court in the instant action lost its " 'unrestricted power to change the judgment.' " (*Ramon, supra*, 50 Cal.App.4th at p. 1236.) By extension, the court also lost its "power" to issue an order postjudgment that conflicted with the terms of the February 17 judgment. (See *ibid.*)

Nor did the trial court in the instant case have some inherent "independent power" to issue an order in direct conflict with the February 17 judgment. (See e.g., *APRI, supra*, 76 Cal.App.4th at p. 185 [noting while a court has some limited authority to correct a judgment "entered ' 'through the inadvertence or improvidence of the trial court,' ' ' that authority is limited to cases where " ' 'the order as entered by the clerk is not the order made by the court,' ' ' or " ' 'where the court failed to express its intention by the order actually made,' ' ' or " ' 'where there was an irregularity which made the order or judgment premature,' ' ' or " ' 'where the court was ignorant of some fact material to the action taken by it' ' "], quoting *Phillips v. Trusheim* (1945) 25 Cal.2d 913, 916; see also *Hamilton v. Laine* (1997) 57 Cal.App.4th 885, 890 [noting the general rule that " '[i]t is

only when the form of the judgment fails to coincide with the substance thereof, as intended at the time of the rendition of the judgment, that it can be reached by a corrective nunc pro tunc order' "].)

In sum, it was up to dismissed defendants — and not, as they argue, to plaintiffs — to use the limited statutory means available to them either to "attack the [February 17] judgment in the trial court" (see *Ramon, supra*, 50 Cal.App.4th at p. 1238) or to "file an appeal" (see *ibid*) from the judgment, both of which required dismissed defendants to "take those steps within specified time periods" (see *ibid.*), and none of which they did. We thus conclude the court lacked the authority to award attorney fees to dismissed defendants following the February 17 judgment "awarding" such fees in the amount of "\$0."⁴

⁴ In light of our conclusion, we deem it unnecessary to resolve any other issues raised by the parties in this appeal, including whether the award of such fees was premature because the case was still proceeding against the remaining defendants; whether the amount awarded to dismissed defendants was excessive; and whether such an award violated public policy in light of the protections provided by California's Mobilehome Residency Law.

DISPOSITION

The August 25, 2017 order awarding dismissed defendants attorney fees is reversed. In the interests of justice, the parties shall bear their respective costs on appeal. (See Cal. Rules of Court, rule 8.278(a)(5)).

BENKE, Acting P. J.

WE CONCUR:

HUFFMAN, J.

HALLER, J.